

ARTICLES APPEARED  
ON PAGE 5NEW REPUBLIC  
25 APRIL 1983

# LEAKY LIBERTIES

Having left public office, Jody Powell plans to write a newspaper column, and he would like to lecture in a political science class at his alma mater. But before he writes and before he lectures, he must gain the approval of government censors. Mr. Powell wants to publish his memoirs, but this too requires official clearance. It hasn't happened yet, but a recent Presidential directive has suddenly made this kind of government interference a real prospect. The edict is designed to prevent leaks of classified information that may threaten national security. We have no quarrel with this goal; the government should protect legitimate secrets. Prudence requires that some information—the identities of intelligence agents, certain negotiation strategies, some military technology, covert operations within the framework of the law—remain secret. But in his attempt to prevent damaging disclosures, the President has gone beyond prudence. He has infringed upon the civil liberties of thousands of people by restricting their right to free speech.

The directive requires present and former government officials with access to the highly classified material known as "Sensitive Compartmented Information" (S.C.I.) to seek official clearance for all public statements about their experiences—for the rest of their lives. This may mean federal censorship of future newspaper articles, campaign speeches, memoirs, lectures, broadcasts, and even fiction. The rule applies to thousands of senior officials in the military, the White House, the National Security Agency, the State Department, the Pentagon, and other executive agencies. Previously such restrictions were enforced only by the C.I.A. (and then with unfair selectivity). Although the new law appears to apply specifically to those with S.C.I. clearance, civil liberties experts say that its ambiguous language may lay the groundwork for a much wider application.

The President's order restrains one of our best ways of learning how the federal government actually works—the willingness of participants to tell their stories. It means that before Alexander Haig gives a public lecture, or Leslie Gelb writes an article, or Bill Moyers makes a broadcast, or Henry Kissinger completes a volume of memoirs, he will have to gain the Administration's approval. Furthermore, the order promises to be a bureaucratic nightmare. It fails, for example, to specify what materials must be submitted for review, leaving each agency to establish its own criteria. The C.I.A. requires the review of anything written about the general topic of intelligence-gathering activities.

Will the State Department now examine everything written by former diplomats about "foreign policy"? Will the Defense Department convene its censorship panel every time one of its many officials speaks out on "national defense"? And what about those officials, such as, say, George Bush, who have worked for more than one agency? To ensure the protection of sensitive information, the directive seems to require that Mr. Bush's public statements be subject to the review of censors not only in the White House, but in the Army and State Department as well. Requiring that former officials negotiate the labyrinths of review procedures every time they want to speak—even if these procedures are conducted in good faith—promises delays that will make timely comment impossible and choke off informed public debate.

And there can be no assurances that good faith will prevail. Prepublication review places in the hands of incumbent officials the power to silence criticism from their predecessors and political opponents. History shows that censors spend much of their time suppressing information which poses no threat to national security, but which is embarrassing to certain officials. In the past five years, the C.I.A. has reviewed more than 800 manuscripts by former agents. Among the "secrets" C.I.A. censors have sought to protect have been stories about funds wasted on office redecoration and former Director Richard Helms's mispronunciation of the Malagasy Republic. It took former agent Ralph W. McGehee two years to get his book approved, even though it contained no "sensitive" disclosures. And these examples come from an agency whose former agents are likely to be sympathetic to stringent security measures. It is true that those censored have the recourse of judicial review, but courts involve time and money, and judges tend to be reluctant to second-guess government testimony about sensitive matters. Freedom of speech means more than the freedom to seek permission to speak.

**T**HE EDICT also specifies that in the event of a leak, any of the hundreds of thousands of government employees with access to classified material (not just S.C.I.) may be forced to take lie detector tests. A Justice Department fact sheet accompanying the directive explained that "the use of the polygraph in any particular case will be subject to the discretion of an employee's agency head," and that those who refuse "will be subject to mandatory administrative sanctions, to include as a minimum, denial of further access to classified information." Polygraph tests are unreliable and inadmissible as evidence in court.

**CONTINUED**

In the event of a leak—or a supposed leak—the leaders of administrative witch hunts will not be held to the same procedural constraints as are practiced elsewhere in society. Nor will the hunted be protected by the same procedural safeguards. And what's to guard against the abuse of polygraphs by agency heads engaged in bureaucratic infighting with their subordinates? Moreover, the order is mistaken in presuming that leaks come most often from the belly of the bureaucracy, rather than from the head. The views of White House National Security Adviser William Clark, a secrecy zealot rivaling only President Reagan himself, are appearing with surprising regularity in that catch-basin of Washington leakery, the Evans and Novak column, raising questions about who should lie-detect the detector. The directive may stem the flow of legitimate free speech, but it is unlikely to stem the flow of leaks.

In fact, we suspect that's not what the President is really after. When Mr. Reagan says he's had it up to his "keister" with leaks, what he means is political embarrassments. Justice Department officials have repeatedly declined to provide an example of a recent breach in security that could have been prevented by the provisions of the new directive. They argue, with some justification, that to point to a security leak would only compound the damage. But a democratic society cannot be expected to accept on faith drastic curtailments of basic freedoms. Although we don't know what security leaks the government may have spouted, we do know that political leaks are coming in torrents. Administration officials were furious, for example, when *The Washington Post* reported in January 1982 that at a "secret" meeting of the Defense Resources Board, officials estimated that the President's military buildup might cost as much as 50 percent more than the \$1.5 trillion announced. The Defense Department plugged in its polygraph and went looking for the source. It was never found. Political leaks are a standard form of Washington communication, and one that has traditionally raised the President's dander. Mr. Nixon's plumbers couldn't plug them; neither will Mr. Reagan's censors.

Two conditions encourage leaks, and the Reagan Administration has supplied both. One is a sense among political players that ordinary channels of communication have been blocked. Memos get screened, but newspapers do not, and a frustrated official may turn to a reporter to get his message across. One White House staffer, for example, went so far as to tell a *New York Times* reporter in January that the budget process was an "unmitigated disaster." And two weeks ago the Defense Department

leaked a letter of complaint by the American Marine Commandant in Beirut in order to publicize tensions in the field.

A SECOND FACTOR that encourages disclosures is the sense that not everything that is classified deserves to be. Some insiders estimate that as much as 95 percent of classified material would be harmless to national security if it were revealed. Here too the Reagan Administration has invited unauthorized disclosures by classifying material that previous Administrations would have made public. For thirty years, from Presidents Truman through Carter, the government made an effort to declassify information, not classify it. "Top secret is meaningless," said Richard Nixon in 1971, noting that state secrets included the White House menu. In 1978 President Carter signed an executive order requiring government officials to consider the public's right to know before classifying a document. In 1980 Attorney General Benjamin Civiletti issued an order requiring government lawyers to consider whether information had been properly classified before seeking punitive action against those who may have disclosed it. The Reagan Administration has reversed these rulings and promoted a number of excessive secrecy measures, including major modifications of the Freedom of Information Act (See "Secrecy Mania," *TNR*, April 28, 1982). Officials are now required to classify materials at their highest, not lowest, secrecy levels, and the judiciary's authority to comment on the process has been stripped. Restriction of public access to information does not stop leaks, it encourages them.

President Reagan's latest directive needs no Congressional ratification; it has already taken effect. Congress could, however, pass its own law significantly reducing the scope of the directive. The President's initiative is the latest manifestation of an attitude that views information as a dangerous thing that the American people are better off without. Both the directive and the attitude are profoundly wrong. The country can afford a leaky government: it's part of the price (or, looked at another way, one of the benefits) of an open society. What the country can't afford is a leaky Bill of Rights.